



SPECIAL

TO: Legislative Liaison Officer

SUBJECT: DOD proposed report on H.R. 5027 (S. 2411), "To amend title 10, United States Code, to modify procedures for payment of military retired pay to spouses and former spouses of members of the uniformed services in compliance with court orders."

The Office of Management and Budget requests the views of your agency on the above subject before advising on its relationship to the program of the President, in accordance with OMB Circular A-19.

A response to this request for your views is needed no later than Monday, April 23, 1984 by COB. The House bill has been ordered reported, and the Committee is holding the record open for DOD's report.

**Questions should be referred to Chris Gamble
(395-3796) or to Hilda Schreiber (395-4650),
the legislative analyst in this office.**

Naomi R. Sweeney
Naomi R. Sweeney for
**Assistant Director for
Legislative Reference**

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DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
WASHINGTON, D.C. 20301

April 17, 1984

Honorable David A. Stockman
Director, Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Stockman:

The views of the Department of Defense have been requested on H.R. 5027, 98th Congress, a bill, "To amend title 10, United States Code, to modify procedures for payment of military retired pay to spouses and former spouses of members of the uniformed services in compliance with court orders."

Advice is requested as to whether there is objection to the presentation of the attached report to the Committee.

It is intended to submit an identical report on S. 2411, the identical bill in the Senate.

Sincerely,

A handwritten signature in cursive script, reading "Robert F. Stoss", is positioned above the typed name.

Robert F. Stoss
Assistant Director
Legislative Reference Service

Enclosure

Honorable Melvin Price
Chairman
Committee on Armed Services
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for this opportunity to outline the views of the Department of Defense concerning H.R. 5027, 98th Congress, a bill "to amend title 10, United States Code, to modify procedures for payment of military retired pay to spouses and former spouses of members of the uniformed services in compliance with court orders." The Department supports the intent of this legislation, but offers an amended bill to achieve necessary due process procedures for affected servicemembers as well as the intended goals of the legislation.

The bill would require the Department to pay part of the retired pay of former members to their former spouses without regard to date of dissolution of marriage, actual compliance with procedures required by law, or length of the marriage.

Currently, the Former Spouses' Protection Act (hereafter called the Act) at 10 U.S.C. § 1408 is prospective. It prevents the Department from making payments to former spouses of retired pay under court orders that fail to specify payment from retired pay if the order became final before June 26, 1981. The bill would alter the prospective effect of the Act. The bill would make the Act retroactive in effect with respect to payment of retired pay for child support and alimony court orders. This change would lift the burden of enforcing the orders now placed

on former spouses. It would do so by removing the substantive and procedural due process requirements of the Act.

The Act currently requires a former spouse whose decree does not contain the specified retired pay language to return to court to amend the decree or seek garnishment of the retiree's pay. Procedural due process thus is afforded to the servicemember. The removal of this protection would force the orders automatically to be paid by the Department.

Proponents of the bill argue the courts of the states which made the orders in the first place provide all due process that is required by law, and that the bill merely makes state court orders enforceable. These arguments overlook the essential characteristics of the military community and ignore the nature of divorce law as it is practiced in the courts that exercise jurisdiction over military marriage dissolution.

Military lawyers have counselled numerous servicemembers who became divorced without participation in the process. Regularly, servicemembers overseas have received "divorces" in the mail. Their first formal notice of the proceeding was the final decree. Even though the decree is valid on its face, it could not be enforced in contested proceedings because of the absence of personal jurisdiction over the servicemember. The lawyer in these circumstances would normally advise the servicemember to choose between seeking to secure marital or parental rights by contesting the matter or protecting pay from claims under an invalid decree by remaining a silent, acquiescing non-party to the process.

The bill would breathe a life into these decrees which they never had or deserved, by permitting enforcement without any judicial review. The only protection left for the servicemember would be the provision of the Act which states "documents" filed with the Department, or the court order, must certify the court complied with the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) which affords servicemembers the opportunity to participate in suits against them. This provision is inadequate even for purposes of due process under the current Act. By permitting unspecified documents in lieu of the court order to certify compliance, the procedural "protection" granted is under the control of a single party to the proceeding who stands to benefit from enforcement of the order. The Act should be amended to require the court to certify that it did comply.

In addition, the provisions of the Act should ensure that the court obtained personal jurisdiction over the servicemember.

For the reasons stated above, the Department of Defense opposes enactment of the bill as it is presently written. A proposed amendment which incorporates the views expressed above is attached. The Department requests the Committee favorably consider amending the subject bill as suggested and would support passage of the amended bill.

The Office of Management and Budget advises that, from the standpoint of the Administration's program, there is no objection to the presentation of this report for the consideration of the Committee.

Sincerely,

AMENDMENT TO H.R. 5027, 98th Congress

After Section 1 of the bill add the following new sections and renumber section 2 of the bill accordingly:

(a) Sec. 2. Subsection (b)(1)(D) of section 1408 of title 10 United States Code is amended to read as follows, "the court certifies in the order or other documents served with the court order that the member was represented by counsel of the member's choice or that the requirements of the Soldiers' and Sailors' Civil Relief Act of 1940 (50 U.S.C. App. 501 et seq.) were complied with.

(b) Sec. 3. Subsection (c)(1) of such section is amended by adding at the end after the word "court" and before the period the following, "and may order payment of child support or alimony from the retired or retainer pay payable to a member for pay periods beginning after June 25, 1981."

(c) Sec. 4. Subsection (c)(4) of such ~~section~~ ^{SECTION} is amended by inserting after the word "member" the first time it appears the following, "or order payment of child support or alimony from retired or retainer pay of the member."